IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4008 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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V P KARIA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4008 of 2001

MRS. SANGEETA PAHWA for

M/S THAKKAR ASSOC. for Petitioner No. 1

MR GORI, ASSTT. GOVERNMENT PLEADER for Respondent No. 1-3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/08/2002

ORAL JUDGEMENT

A short question involved in this petition calling for consideration of this Court is, whether the

petitioner who was due for higher pay grade on 22.12.1996 could have been denied consideration of his right on the ground that a Departmental proceeding is under contemplation and a show cause notice is served on him.

2. The petitioner is a Deputy Mamlatdar, who became entitled to the benefit of higher pay grade on the basis of Government REsolution dated 16th August, 1994, on 22.12.1996. By Annexure "A", the Collector, Junagadh, communicated to the petitioner that the Committee resolved to postpone taking of decision on question of grant of higher pay grade to the petitioner, on account of Departmental proceedings contemplated against him on the basis of a show cause notice served on him. The petitioner has approached this Court praying for quashing and setting aside the arbitrary and illegal action of not giving benefit of higher pay-scale to the petitioner.

3. Learned Advocate Mrs. Pahwa appearing for the petitioner has drawn attention of this Court to a GR dated 16th August, 1994 ("GR of 1994" for short) and particularly to Clause 3.5, wherein it is provided that while considering the question of grant of higher pay grade pay, confidential reports and overall working, efficiency, qualifications, ability etc. are to be considered. It is also provided therein that if on the relevant date i.e. on the date of entitlement of higher pay grade, if the employee is under suspension or is served with charge-sheet under Rule 9 or 10 of the Discipline & Appeal Rules, he would not be entitled to higher pay grade. It is also provided that if ultimately the employee is exonerated from the charges in the Departmental enquiry, his case can be considered on merits. Mrs. Pahwa submitted that on day of entitlement, petitioner was neither under suspension, nor was any charge-sheet served on him and the Committee therefore acted arbitrarily while not considering the case of the petitioner for grant of higher pay grade on the ground that show cause notice is served on him and Departmental proceedings are contemplated. She therefore urged that the petition may be allowed.

4. Learned AGP Mr. Gori has opposed to this petition on the ground that allegations are of serious nature and that higher pay grade is required to be given after considering previous confidential reports, efficiency, qualifications etc. The second fold of the arguments is that the petitioner has approached this Court directly without exhausting alternative remedy and therefore the petition may be dismissed.

5. The contention raised on both the sides are given due consideration by this Court. What emerges therefrom is that there is no dispute about the fact that on the date of entitlement of the higher pay grade, or on date of Committee's decision, the petitioner was not under suspension and that he was not served with any charge-sheet. Plain reading of GR of 1994 paragraph 3.5 makes it clear that only those employees who are under suspension or who are served with a charge-sheet under Rule 9 or Rule 10 of the Disciplinary Appeal Rules would not be entitled to be granted higher pay grade. Obviously the case of the petitioner would not be governed by this provision.

A reading of Annexure "A" makes it clear that the Committee constituted for considering the question of grant of higher pay grade, postponed the question of considering the petitioner's case for grant of higher pay grade only on the ground of Show Cause Notice and contemplated Departmental action. It is also worthwhile to note that as per the statement made at bar by Mrs. Pahwa, learned Advocate for the petitioner, even as on today, i.e almost after six years, the petitioner is not served with any charge-sheet. Under the circumstances, the petition deserves to be accepted to the extent that the respondent can be directed to consider the case of the petitioner for grant of higher pay grade on merits, in light of GR of 1994 and/or the Rules, if any.

6. The petition is therefore allowed to the extent that respondent authorities are directed to consider the case of the petitioner for higher pay grade, on merits and take an appropriate decision in accordance with Rules and law. Such decision shall be taken by the authority as early as possible, preferably within 3 months from the date of receipt of a copy of this order, but not later than end of November, 2002, without being influenced only by the factum of service of show cause notice and after considering the requirements contemplated under GR of 1994. Rule is made absolute accordingly with no order as to costs.

(A.L.Dave, J.)

*/Mohandas